Code, §§ 6604—1 et seq.), under appellant's contention that the act is applicable only where recovery is sought upon the ground of negligence of the employer. * * * The conclusion is evident that, in the enactment of this new law, the Legislature declared it to be the policy of this state that every hazardous industry within the purview of the act should bear the burden arising out of injuries to its employees; and that it was the further policy of the state to do away with the recognized evils attaching to the remedies under existing forms of law and to substitute a new remedy that should be ample, full, and complete, reaching every injury sustained by any workman while employed in any such industry, regardless of the cause of the injury or the negligence to which it might be attributed. * * * To say with appellant that the intent of the act is limited to the abolishment of negligence as a ground of action against an employer only is to overlook and read out of the act and its declaration of principles the economic thought sought to be crystallized into law—that the industry itself was the primal cause of the injury, and, as such, should be made to bear its burdens."

Witnesses—Competency—In Federal Courts—Conviction of Felony.—In Maxey *v.* United States, in the U. S. Circuit Court of Appeals, Eighth Circuit (297 Fed. 327), it was held that a person who had been convicted of felony and sentenced to a penitentiary was incompetent as a witness in a criminal trial in a United States court sitting in the Eastern District of Arkansas. It is indicated by the record that the conviction and sentence of the witness had been by a Federal court, indeed by the same court in which the judgment of conviction in the case at bar appealed from had been obtained. It was shown to be the settled rule that the competency of witnesses to testify in criminal cases in courts of the United States is determined by the law of the state where the trial is had, as it existed when the Judiciary Act of 1789 was passed, or as to states whose territories were not then within the boundaries of the Union, by the law of the state when it was admitted (Logan *v.* United States, 144 U. S. 263), except in so far as Congress has differently provided. The court cites illustrations of congressional inertia as to reforms of procedure that have long been adopted by state legislatures. For example, attention is called to the fact that it was not until 1878 that persons charged with crime in a court of the United States, were made competent witnesses in their own behalf, and not until 1913 that it was enacted that a piece of admitted or proved handwriting of a person might be introduced in evidence as a basis for comparison by witnesses with a handwriting of disputed genuineness.

Section 858 of the Revised Statutes of the United States provided that "in all other respects the laws of the state in which the court

is held shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law, and in equity and admiralty." This language was the final sentence of a statute in one respect expressly regulating competency of witnesses in civil cases, and there has been substituted for the whole section by amendment of 1906 and § 1464 of the United States Compiled Statutes of 1913 the following:

"The competency of a witness to testify in any civil action, suit or proceeding in the courts of the United States shall be determined by the laws of the state or territory in which the court it held."

This statute does not mention criminal trials so that state statutes of such broad scope as § 832 of the New York Code of Civil Procedure are not applicable in criminal trials in the federal courts. The New York statute provides:

"A person who has been convicted of a crime or misdemeanor is notwithstanding a competent witness in a civil or criminal action or special proceeding; but the conviction may be proved for the purpose of affecting the weight of his testimony, either by the record or by his cross-examination, upon which he must answer any question relevant to that inquiry; and the party cross-examining him is not concluded by his answer to such a question."

The recent decision of the United States Circuit Court of Appeals, Sixth Circuit, in Brown *v.* United States (May, 1916, 233 Fed. 353), practically limits the embarrassment to which the People may be subjected in conducting federal criminal prosecutions. It was held that as the federal courts are courts of a different sovereignty and are independent of the states, a conviction of infamous crime in a Tennessee state court, although rendering a person incompetent to testify in the state courts, does not disqualify him from giving evidence in a criminal trial in a federal court sitting in Tennessee. There is an elaborate opinion showing sufficient grounds for this position in the history of the subject and former adjudications. In this exceptional case a narrow and technical application of legal principle aided the cause of progress and free administration of justice. At the close of its opinion the courts remarks:

"The tendency of the courts, wherever possible, is 'to enlarge the domain of competency and to submit to the jury for their consideration as to the credibility of the witness those matters which heretofore were ruled sufficient to justify his exclusion' (Benson *v.* United States 146 U. S. 325, 336-337, 13 Sup. Ct. 60, 64, 36 L. Ed. 991.) 'This change,' says the Supreme Court in this case, 'has been wrought partially by legislation and partially by judicial construction. * * * The spirit of this legislation has controlled the decisions of the courts, and steadily, one by one, the merely technical barriers which excluded witnesses from the stand have been removed.'"

It would seem that Congress should at least extend the operation

of § 1464 of the Compiled Statutes of 1913 to include criminal trials so that the existing and not merely the former law of a state in which a federal court is held may be administered. And the amendment may well be carried even further by adopting an independent statute for the federal courts of the same scope as that of § 832 of the New York Code of Civil Procedure. It is stated in the opinion in the Maxey case that the disqualification for infamy by conviction of crime has not been removed by statute in Arkansas except partially in civil cases. A mere extension of § 1464 of the Federal Compiled Statutes in its present form to include criminal trials would not help the existing situation as to trials in ultra conservative states if the convictions relied on for disqualification had themselves been obtained in federal courts.

The following language from the opinion in Maxey *v.* United States (supra), which would seem true now as it was at the time of that decision, may be quoted: "It is urged in the brief of counsel for the United States that Congress has passed no law making the conviction of crime a disqualification. This is an erroneous view to take of the matter. The common law prevails until Congress shall decide otherwise. The courts of the United States were organized and their jurisdiction defined, but the matter of the competency of witnesses has never been legislated upon by Congress except as to civil cases, and there is no rule upon the subject unless we go to the common law.

Nuisance—Joint Liability—(Several Liability of Persons Separately Contributing to the Same Nuisance.)—In Key *v.* Armour Fertilizer Works, in the Court of Appeals of Georgia (July, 1916, 89 S. E. 593), it was laid down in the syllabus by the court that where two "separate and distinct corporations in proximity to each other operate their respective and separate plants for manufacturing fertilizers, and from each plant noxious and poisonous gases are discharged into the atmosphere and invade the premises of a nearby resident, and so poison and befoul the air therein as to cause sickness and death in his family, and otherwise to injure him, and to create an actionable nuisance, but where there is no common ownership or operation of the plants, no community of interest, and no common design, purpose, concert or joint action, a suit by the adjacent resident against the two corporations jointly for damage caused by their respective acts thus separately committed cannot be maintained," each being liable for its proportion of the damages only. The action was brought against two such corporations and a demurrer is sustained on the ground of improper joinder of parties and of causes of action. The court said in part:

"Conceding that an actionable nuisance appeared, and that both